

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

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In the Matter of)	
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CERTAIN ZERO-MERCURY-ADDED)	Inv. No. 337-TA-493
ALKALINE BATTERIES, PARTS)	
THEREOF, AND PRODUCTS)	
CONTAINING SAME)	
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**NOTICE OF COMMISSION DECISION TO TERMINATE INVESTIGATION WITH A
FINDING OF NO VIOLATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the above-captioned investigation with a finding of no violation of section 337.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3090. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 2, 2003, based on a complaint filed by Energizer Holdings, Inc. and Eveready Battery Company, Inc., both of St. Louis, Missouri. 68 *Fed. Reg.* 32771 (June 2, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain zero-mercury-added alkaline batteries, parts thereof, and products containing same by reason of infringement of claims 1-12 of U.S. Patent No. 5,464,709 ("the '709 patent"). The complaint and notice of investigation named 26 respondents and were later amended to include an additional firm as a

respondent. The investigation has been terminated as to claims 8-12 of the '709 patent. Several respondents have been terminated from the investigation for various reasons.

On June 2, 2004, the ALJ issued his final ID finding a violation of section 337. He also recommended the issuance of remedial orders. A number of the remaining respondents petitioned for review of the ID. Complainants and the Commission investigative attorney filed oppositions to those petitions. On July 9, 2004, the Commission issued a notice that it had determined to review the ALJ's final ID in its entirety. In that notice, the Commission requested written submissions on the issues on review (noting issues and questions it particularly sought briefing on), as well as on remedy, the public interest, and bonding. Complainants, respondents, and the Commission investigative attorney filed written submissions.

Having considered the record in this investigation, including the written submissions on the issues on review and on remedy, the public interest, and bonding, the Commission has determined to terminate this investigation with a finding of no violation of section 337. Specifically, the Commission has determined that the asserted claims are invalid for indefiniteness. The Commission has determined to take no position on the other issues raised in this investigation. Finally, the Commission has determined to deny as moot the May 21, 2004, motion of respondent Ningbo Baowang Battery Co. Ltd. to terminate the investigation as to it, as well as its motion to reopen the evidentiary record.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.41-.51 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.41-.51).

By order of the Commission.

Marilyn R. Abbott
Secretary to the Commission

Issued: October 1, 2004